139-151

139-151

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1072.

J. C. STOUT, PLAINTIFF IN ERROR,

vs.

JOHN J. MASTIN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

FILED NOVEMBER 2, 1889.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, AUGUST 18, 1890.

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1 In District Court, Wyandotte County, State of Kansas.

KERSEY COATES, Assignee of Mastin Bank, Plaintiff,
vs.
J. C. STOUT, Defendant. } Petition.

The said Kersey Coates, plaintiff in this action, complains of the said J. C. Stout, defendant herein, for that the said plaintiff is the duly appointed, qualified, and acting assignee of the Mastin Bank (a corporation duly organized under the laws of the State of Missouri and lately doing business in said State) by deed duly executed and delivered by said Mastin Bank to the said plaintiff herein, and for that the said plaintiff is the owner in fee, has a legal and equitable estate in and to the following-described real property, and is entitled to the immediate possession thereof, to wit: Lot No. 248, on Wood street, and lot No. 241, on James street, and lot No. 246, on Armstrong street, and lot No. 248, on Armstrong street, and lot No. 250, on Armstrong street, and lot No. 252, on Armstrong street, and lot No. 260, on Armstrong street, all in Kansas City, Kansas, in the county of Wyandotte, State of Kansas.

And the said plaintiff avers that the said defendant herein now unlawfully and wrongfully detains and withholds the possession of said real property all and singular from the said plaintiff, and hath so detained and withheld the same from the plaintiff herein for the space of three years last past, whereby plaintiff hath been deprived of the use thereof during all of said period, to the damage of plaintiff in the sum of two hundred dollars.

Plaintiff therefore demands judgment against defendant for the immediate possession of all said real property, as well for said sum of $200, his damages so as aforesaid sustained.

A. SMITH DEVENNEY,
Att'y for Pl't'ff.

2 In the District Court of Wyandotte County, State of Kansas.

KERSEY COATES, Assignee of the Mastin Bank, Plaintiff,
vs.
JAS. C. STOUT, Defendant.

Answer.

And now comes said defendant and, for answer to plaintiff's petition, denies each and every allegation therein contained.

GOODWIN & KEPLINGER,
Att'ys for Defendant.

Endorsed: No. 3321. Kersey Coates, pl't'ff, *vs.* J. C. Stout, defendant. Answer. Filed February 12th, 1884. L. C. Trickey, clerk, by M. Y. Trickey, deputy.

1—1072

3 THE STATE OF KANSAS, } ss:
Tenth Judicial District, Wyandotte County, }

At a session of the district court, sitting within and for said county of Wyandotte, begun and held at the court-house, in the city of Wyandotte, in said county, on the 6th day of December, 1886, as by statute required—

There being present Hon. J. P. Hindman, judge of said judicial district, and James Ferguson, sheriff, and L. C. Trickey, clerk of the district court of said county, the following proceedings are had:

SATURDAY, *December 18th, A. D.* 1886.

KERSEY COATES, Assignee of the Mastin Bank, } No. 3321.
vs.
J. C. STOUT.

At this day comes plaintiff, by his attorney, A. S. Devenney, and files his petition, affidavit, and bond for removal of this cause to the circuit court of the United States in and for the district of Kansas in manner and form as required by law, and the court now approves said bond and surety thereon and orders that this court proceed no further herein, and that this cause be removed into the circuit court of the United States in and for the district of Kansas, and the clerk of this court is hereby ordered to make and transmit to said circuit court, as required by law, the record in this cause; to the entry of which order defendant duly excepts.

STATE OF KANSAS, } ss:
County of Wyandotte, }

I, L. C. Trickey, clerk of district court in and for said
4 county and State, hereby certify that — above and foregoing is a full, true, and complete transcript of the record of the case of Kersey Coates, assignee of Mastin Bank, *vs.* J. C. Stout, No. 3321 (except opinion of supreme court) as fully as same appears of record and on file in my office.

Witness my hand and seal of said court December 29, 1886.

[SEAL.] L. C. TRICKEY,
Clerk District Court, Wyandotte County, Kansas.

A copy of opinion of supreme court in above case is attached to case of Kersey Coates, assignee, &c., *vs.* F. Kirkbride, No. 3320.

L. C. TRICKEY, *Clerk.*

Costs in district court, paid by pl't'ff $21 20
Transcript of record paid, by pl't'ff 9 00

Endorsed: No. 5851. Kersey Coates, assignee, *vs.* J. C. Stout. Transcript of record. Filed January 6th, 1887. A. S. Thomas, clerk, by Frank H. Holt, deputy.

5 UNITED STATES OF AMERICA, } ss:
District of Kansas, }

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Topeka, in said district, on Monday, the 28th day of November, 1887, proceedings were had and appear of record in words and figures following, to wit:

WEDNESDAY, *December 14th*, 1887.

KERSEY COATES, Assignee of the Mastin Bank, Plaintiff, }
vs. } 5851.
J. C. STOUT, Defendant. }

Now come A. Smith Deveney and T. A. Frank Jones, attorneys for plaintiff, and inform the court that Kersey Coates, the plaintiff in the above-entitled cause, has died since the last term of this court. Continued.

6 C. F. Hutchings.
L. W. Keplinger.

LAW OFFICE OF HUTCHINGS & KEPLINGER,
KANSAS CITY, KANSAS, *June* 11, 1888.

Mr. A. S. Thomas, clerk U. S. C. c't.

DEAR SIR: It is agreed that the following cases, viz., Coates *vs.* J. C. Stout, term No. 189, and Coates *vs.* Kirkbride, term No. 188, be passed until Monday, 18th. It is the desire of all parties that the cases be disposed of at present term.

T. A. FRANK JONES,
Attorney for Pl't'ff.
HUTCHINGS & KEPLINGER,
For Stout.
JOHN A. HALL,
Att'y for Kirkbride.

Endorsed: Nos. 5850, 5851. Stipulation. Filed June 12, 1888. A. S. Thomas, clerk, by Frank H. Holt, deputy.

In the Circuit Court of the United States for the District of Kansas.

KERSEY COATES, Assignee of the Mastin Bank, Plaintiff, }
vs. }
J. C. STOUT, Defendant. }

Now comes John J. Mastin, by attorney, and moves the court to substitute him as plaintiff in the action in place of Kersey Coates, assignee of the Mastin Bank, for the reason that since the institution of this suit, to wit, on June 21st, 1884, the said Kersey Coates, assignee of the Mastin Bank, by deed conveyed all his interest in the
7 lands which form the subject-matter of the suit to one J. V. C. Karnes, and afterwards, to wit, on January 17th, 1887, the

said J. V. C. Karnes by deed conveyed all his interest in said lands to the said John J. Mastin, who is now the owner thereof and the real party in interest instead — the said Kersey Coates, assignee of the Mastin Bank, and is therefore entitled to prosecute this action in his own name.

JOHN J. MASTIN,
By T. A. FRANK JONES, *His Att'y.*

Endorsed: No. 5851. K. Coates, assignee, *vs.* J. C. Stout. Motion of John J. Mastin to be substituted as plaintiff. Filed December 10, 1888. Geo. F. Sharitt, clerk. T. A. Frank Jones, att'y for Mastin.

UNITED STATES OF AMERICA, } *ss:*
District of Kansas, }

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Topeka, in said district, on Monday, the 26th day of November, 1888, proceedings were had and appear of record in words and figures following, to wit:

SATURDAY, *December* 15, 1888.

KERSEY COATES, Assignee of Mastin Bank, }
vs. } 5851.
J. C. STOUT. }

On motion, it is ordered by the court that John J. Mastin be substituted as party plaintiff in this action.

8 SATURDAY, *January 19th*, 1888.

KERSEY COATES, Assignee of Mastin Bank, }
vs. } 5851.
J. C. STOUT. }

The defendant's motion to remand this action to the district court of Wyandotte county, Kansas, came on to be heard and was argued by counsel; on consideration whereof the court overrules said motion.

In the Circuit Court of the United States for the District of Kansas.

JOHN J. MASTIN, Pl't'ff, }
vs. } No. 5850.
F. KIRKBRIDE, Def't. }

JOHN J. MASTIN, Pl't'ff, }
vs. } No. 5851.
J. C. STOUT, Def't. }

A jury is waived in the above-entitled cases, and it is agreed that they shall be tried at Topeka, Kansas, on some day subsequent to

June 15th, 1889, which may be agreed on by attorneys and be acceptable to the court.

JOHNSON, MARTIN & KEELER,
T. A. FRANK JONES,
Att'ys for Pl't'ff.
HUTCHINGS & KEPLINGER,
Att'ys for Stout.
F. D. McFARLAND,
For Def't in 5850.

Endorsed: 5850 & 5851. John J. Mastin *vs.* F. Kirkbride. John J. Mastin *vs.* J. C. Stout. Stipulation. Filed June 7th, 1889. G. F. Sharitt, clerk.

9 In the Circuit Court of the United States, District of Kansas.

J. J. MASTIN
vs.
J. C. STOUT.

Answer.

Defendant, for answer to plaintiff's petition, says that for the purposes of this trial only he admits that until the execution of the tax deeds hereinafter mentioned the parties under whom plaintiff claims title were the owners and entitled to the possession of the property mentioned in the petition. Defendant says that at the time at which said deeds purport to have been executed, viz., September, 1881, the several tax deeds hereto attached and marked Exhibits A, B, C, D, E, F, & G were executed to defendant and were forthwith recorded in the office of the register of Wyandotte county, and that therefore he entered into possession thereof and made lasting and valuable improvements thereon, and has ever since remained in such possession. Defendant claims to be the owner and entitled to possession, and denies plaintiff's ownership and right to possession thereof solely by reason of said tax deeds and not otherwise, and he admits that but for said tax deeds plaintiff would be entitled to recover as prayed for. Said property is worth over five thousand dollars.

HUTCHINGS & KEPLINGER,
Att'ys for Def't.

Endorsed: No. 5851. Answer. Filed June 28th, 1889. George F. Sharitt, clerk.

10 Ex. A.

Tax Deed.

Know all men by these presents that whereas the following-described real property, viz., lot 246, Armstrong street, Kansas City, Kansas, situated in the county of Wyandotte and State of Kansas, was subject to taxation for the year A. D. 1877; and whereas the taxes assessed upon said real property for the year aforesaid re-

mained due and unpaid at the date of the sale hereinafter mentioned; and whereas the treasurer of said county did, on the 4th day of September, A. D. 1878, by virtue of the authority in him vested by law, at an adjourned sale of the sale begun and publicly held on the first Tuesday in September, 1878, expose to public sale, at the county-seat of said county, in substantial conformity with all the requisitions of the statute in such cases made and provided, the real property above described for the payment of taxes, interest, and costs then due and remaining unpaid upon said property; and whereas, at the place aforesaid, J. C. Stout, of the county of Wyandotte and State of Kansas, having offered to pay the sum of three dollars and forty-five cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on said property, for the whole of the property, as above described, which was the least quantity bid for, and payment of said sum having been by him made to the said treasurer, the said property was stricken off to him at that price; and whereas the subsequent taxes for the years 1878, 1879, & 1878, amounting to the sum of ten dollars and 11 fifty-seven cents, have been paid by the purchaser as provided by law; and whereas 3 years have elapsed since the date of said sale, and the said property has not been redeemed therefrom as provided by law:

Now, therefore, I, D. R. Emmons, county clerk of the county aforesaid, for and in consideration of the sum of fourteen dollars and two cents, taxes, cost, and interest due on said land for the years 1877, 1878, 1879, & 1880 to the treasurer, paid as aforesaid, and by virtue of the statute in such case made and provided, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said J. C. Stout, his heirs and assigns, the real property last hereinbefore described; to have and to hold unto him, the said J. C. Stout, his heirs and assigns forever, subject, however, to all rights of redemption provided by law.

In witness whereof I, D. R. Emmons, county clerk as aforesaid, by virtue of authority aforesaid, have hereunto subscribed my name and affixed the official seal of said county on this 7th day of September, A. D. 1881.

[SEAL.] D. R. EMMONS,
County Clerk.

STATE OF KANSAS, }
County of Wyandotte, } *ss:*

I hereby certify that before me, F. B. Anderson, a notary public in and for said county, personally appeared the above-named D. R. Emmons, clerk of said county, personally known to me to be the clerk of said county at the date of the execution of the above conveyance and to be the identical person whose name is affixed to and who executed the above conveyance as clerk of said county, and who acknowledged the execution of the same to be his voluntary act and deed, as clerk of said county, for the purpose therein named.

12 Witness my hand and official seal this 7th day of September, A. D. 1881.

My commission expires the 19th day of Feb'y, 1884.

[SEAL.] F. B. ANDERSON,
Notary Public.

Trans.	5
Advertising fee	10
Co. cl'k's fee	1 00
	$1 15

D. R. EMMONS,
County Clerk.

Endorsed: Tax deed from Wyandotte county to J. C. Stout.

STATE OF KANSAS, } ss:
Wyandotte County, }

This instrument was filed for record on the 7 day of September, A. D. 1881, at 4.40 o'clock p. m., and duly recorded in Book 15, on pages 125, 126, 127.

J. S. CLARK,
Register of Deeds.

Fee, $1.25.

I hereby certify that the within deed was entered for transfer on my transfer record this 7 day of September, 1881.

D. R. EMMONS,
County Clerk.

13 Ex. B.

Tax Deed.

Know all men by these presents that whereas the following-described real property, viz., lot 252, Armstrong street, Kansas City, Kansas, situated in the county of Wyandotte and State of Kansas, was subject to taxation for the year A. D. 1877; and whereas the taxes assessed upon said real property for the year aforesaid remained due and unpaid at the date of the sale hereinafter mentioned; and whereas the treasurer of said county did, on the 4th day of September, A. D. 1878, by virtue of the authority in him vested by law, at an adjourned sale of the sale begun and publicly held on the first Tuesday in September, 1878, expose to public sale, at the county-seat of said county, in substantial conformity with all the requisitions of the statute in such cases made and provided, the real property above described for the payment of taxes, interest, and costs then due and remaining unpaid upon said property; and whereas, at the place aforesaid J. C. Stout, of the county of Wyandotte and State of Kansas, having offered to pay the sum of three dollars and forty-five cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on said property for the whole of the property as above described, which was the least quantity bid for, and pay-

ment of said sum having been by him made to the said treasurer, the said property was stricken off to him at that price; and whereas the subsequent taxes for the years 1878, 1879, & 1880, amount-
14 ing to the sum of ten dollars and fifty-seven cents, have been paid by the purchaser as provided by law; and whereas 3 years have elapsed since the date of said sale and the said property has not been redeemed therefrom as provided by law:

Now, therefore, I, D. R. Emmons, county clerk of the county aforesaid, for and in consideration of the sum of fourteen dollars and two cents, taxes, costs, and interest due on said land for the years 1877, 1878, 1879, & 1880, to the treasurer paid as aforesaid, and by virtue of the statute in such case made and provided, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said J. C. Stout, his heirs and assigns, the real property last hereinbefore described; to have and to hold unto him, the said J. C. Stout, his heirs and assigns forever, subject, however, to all rights of redemption provided by law.

In witness whereof I, D. R. Emmons, county clerk as aforesaid, by virtue of authority aforesaid, have hereunto subscribed my name and affixed the official seal of said county on this 7th day of September, A. D. 1881.

[SEAL.] D. R. EMMONS,
County Clerk.

STATE OF KANSAS, }
County of Wyandotte, } ss:

I hereby certify that before me, F. B. Anderson, a notary public in and for said county, personally appeared the above-named D. R. Emmons, clerk of said county, personally known to me to be the clerk of said county at the date of the execution of the above conveyance and to be the identical person whose name is affixed to and who executed the above conveyance as clerk of said county, and who acknowledged the execution of the same to be his voluntary act and deed as clerk of said county for the purpose therein named.

15 Witness my hand and official seal this 7th day of September, A. D. 1881.

My commission expires the 19th day of Feb'y, 1884.

[SEAL.] F. B. ANDERSON,
Notary Public.

Trans.	$ 05
Advertising fee for deed	10
Co. cl'k's fee for deed	1 00
	$1 15

Endorsed: Tax deed from Wyandotte county to J. C. Stout.

STATE OF KANSAS, }
Wyandotte County, } ss:

This instrument was filed for record on the 7 day of September,

A. D. 1881, at — o'clock —. m., and duly recorded in Book —, on page —.

——— ———,
Register of Deeds.

I hereby certify that the within deed was entered for transfer on my transfer record this — day of ———, 18—.

——— ———,
County Clerk.

16 Ex. "C."

Tax Deed.

Know all men by these presents that whereas the following-described real property, viz., lot 250, Armstrong street, Kansas City, Kansas, situated in the county of Wyandotte and State of Kansas, was subject to taxation for the year A. D. 1887; and whereas the taxes assessed upon said real property for the year aforesaid remained due and unpaid at the date of the sale hereinafter mentioned; and whereas the treasurer of said county did, on the 4th day of September, A. D. 1878, by virtue of the authority in him vested by law, at an adjourned sale of the sale begun and publicly held on the first Tuesday in September, 1878, expose to public sale, at the county seat of said county, in substantial conformity with all the requisitions of the statute in such cases made and provided, the real property above described for the payment of taxes, interests, and costs then due and remaining unpaid upon said property; and whereas, at the place aforesaid, J. C. Stout, of the county of Wyandotte and State of Kansas, having offered to pay the sum of three dollars and forty-five cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on said property, for the whole of the property above described, which was the least quantity bid for, and payment of said sum having been by him made to the said treasurer, the said property was stricken off to him at that price;

17 and whereas the subsequent taxes for the years 1878, 1879, & 1880, amounting to the sum of ten dollars and fifty-seven cents, have been paid by the purchaser, as provided by law; and whereas 3 years have elapsed since the date of said sale and the said property has not been redeemed therefrom as provided by law:

Now, therefore, I, D. R. Emmons, county clerk of the county aforesaid, for and in consideration of the sum of fourteen dollars and two cents, taxes, cost, and interest due on said land for the years 1877, 1878, 1879, & 1880, to the treasurer paid as aforesaid, and by virtue of the statute in such case made and provided, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said J. C. Stout, his heirs and assigns, the real property last hereinbefore described; to have and to hold unto him, the said J. C. Stout, his heirs and assigns forever, subject, however, to all rights of redemption provided by law.

In witness whereof I, D. R. Emmons, county clerk as aforesaid,

by virtue of authority aforesaid, have hereunto subscribed my name and affixed the official seal of said county on this 7th day of September, A. D. 1881.

[SEAL.] D. R. EMMONS,
County Clerk.

STATE OF KANSAS, } ss:
County of Wyandotte, }

I hereby certify that before me, F. B. Anderson, a notary public in and for said county, personally appeared the above-named D. R. Emmons, clerk of said county, personally known to me to be the clerk of said county at the date of the execution of the above conveyance and to be the identical person whose name is affixed to and who executed the above conveyance as clerk of said county, and who acknowledged the execution of the same to be his voluntary act and deed as clerk of said county for the purpose therein named.

18 Witness my hand and official seal this 7th day of September, A. D. 1881.

My commission expires the 19th day of Feb'y, 1884.

[SEAL.] F. B. ANDERSON,
Notary Public.

Trans.	5
Advertising fee for deed	10
Co. cl'k's fee for deed	1 00
	$1 15

D. R. EMMONS, *Co. Cl'k.*

Endorsed: Tax deed from Wyandotte county to J. C. Stout.

STATE OF KANSAS, } ss:
Wyandotte County, }

This instrument was filed for record on the 7 day of September, A. D. 1881, at 4.50 o'clock p. m., and duly recorded in Book 15, on pages 123, 124.

J. S. CLARK,
Register of Deeds.

Fee, $1.25, paid.

I hereby certify that the within deed was entered for transfer on my transfer record this 7th day of September, 1881.

D. R. EMMONS,
County Clerk.

19 Ex. D.

Tax Deed.

Know all men by these presents that whereas the following-described real property, viz., 241 James street, Kansas City, Kansas, situated in the county of Wyandotte and State of Kansas, was sub-

ject to taxation for the year A. D. 1877; and whereas the taxes assessed upon said real property for the year aforesaid remained due and unpaid at the date of the sale hereinafter mentioned; and whereas the treasurer of said county did, on the 4th day of September A. D. 1878, by virtue of the authority in him vested by law, at an adjourned sale of the sale begun and publicly held on the first Tuesday in September, 1878, expose to public sale, at the county-seat of said county, in substantial conformity with all the requisitions of the statute in such cases made and provided, the real property above described for the payment of taxes, interest, and costs then due and remaining unpaid upon said property; and whereas, at the place aforesaid, J. C. Stout, of the county of Wyandotte and State of Kansas, having offered to pay the sum of four dollars and eighty-nine cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on said property, for the whole of the property as above described, which was the least quantity bid for, and payment of said sum having been by him made to the said treasurer, the said property was stricken off to him at that price; and whereas the subsequent taxes for the years 1878, 1879, & 1880, amounting to the sum of fourteen dollars and sixty-six cents, have been paid by the purchaser, as provided by law; and whereas 3 years have elapsed since the date of said sale and the said property has not been redeemed therefrom as provided by law:

Now, therefore, I, D. R. Emmons, county clerk of the county aforesaid, for and in consideration of the sum of nineteen dollars and fifty-five cents, taxes, costs, and interest due on said land for the years 1877, 1878, 1879, & 1880, to the treasurer paid as aforesaid, and by virtue of the statute in such case made and provided, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said J. C. Stout, his heirs and assigns, the real property last hereinbefore described; to have and to hold unto him, the said J. C. Stout, his heirs and assigns forever, subject, however, to all rights of redemption provided by law.

In witness whereof I, D. R. Emmons, county clerk as aforesaid, by virtue of authority aforesaid, have hereunto subscribed my name and affixed the official seal of said county on this 7th day of September, A. D. 1881.

[SEAL.] D. R. EMMONS,
County Clerk.

STATE OF KANSAS, }
County of Wyandotte, } *ss:*

I hereby certify that before me, F. B. Anderson, a notary public in and for said county, personally appeared the above-named D. R. Emmons, clerk of said county, personally known to me to be the clerk of said county at the date of the execution of the above conveyance and to be the identical person whose name is affixed to and who executed the above conveyance as clerk of said county, and who acknowledged the execution of the same to be his voluntary

act and deed as clerk of said county for the purpose therein named.

21 Witness my hand and official seal this 7th day of September, A. D. 1881.

My commission expires the 19th day of Feb'y, 1884.

[SEAL.] F. B. ANDERSON,
Notary Public.

Trans.	5
Advertising fee for deed	10
Co. cl'k's fee for deed	1 00
	$1 15

D. R. EMMONS,
County Clerk.

Endorsed: Tax deed from Wyandotte county to J. C. Stout.

STATE OF KANSAS, }
Wyandotte County, } *ss:*

This instrument was filed for record on the 7th day of September, A. D. 1881, at 4.20 o'clock p. m., and duly recorded in Book 15, on pages 120, 121.

J. S. CLARK,
Register of Deeds.

Fee, $1.25, paid.

I hereby certify that the within deed was entered for transfer on my transfer record this 7th day of September, 1881.

D. R. EMMONS,
County Clerk.

22 Ex. E.

Tax Deed.

Know all men by these presents that whereas the following-described real property, viz., lot 260, Armstrong street, Kansas City, Kansas, situated in the county of Wyandotte and State of Kansas, was subject to taxation for the year A. D. 1877; and whereas the taxes assessed upon said real property for the year aforesaid remained due and unpaid at the date of the sale hereinafter mentioned; and whereas the treasurer of said county did, on the 4th day of September, A. D. 1878, by virtue of the authority in him vested by law, at an adjourned sale of the sale begun and publicly held on the first Tuesday in September, 1878, expose to public sale, at the county-seat of said county, in substantial conformity with all the requisitions of the statute in such cases made and provided, the real property above described for the payment of taxes, interest, and cost then due and remaining unpaid upon said property; and whereas at the place aforesaid J. C. Stout, of the county of Wyandotte and State of Kansas, having offered to pay the sum of three dollars and forty-five cents, being the whole amount of taxes, in-

terest, and costs then due and remaining unpaid on said property, for the whole of the property as above described, which was the least quantity bid for, and payment of said sum having been by him made to the said treasurer, the said property was stricken off to him at that price; and whereas the subsequent taxes of the years 1878, 1879, & 1880, amounting to the sum of ten dollars and
23 fifty-seven cents, have been paid by the purchaser, as provided by law; and whereas 3 years have elapsed since the date of said sale and the said property has not been redeemed therefrom, as provided by law:

Now, therefore, I, D. R. Emmons, county clerk of the county aforesaid, for and in consideration of the sum of fourteen dollars and two cents, taxes, cost, and interest due on said land for the years 1877, 1878, 1879, & 1880, to the treasurer paid as aforesaid, and by virtue of the statute in such case made and provided, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said J. C. Stout, his heirs and assigns, the real property last hereinbefore described; to have and to hold unto him, the said J. C. Stout, his heirs and assigns forever, subject, however, to all rights of redemption provided by law.

In witness whereof I, D. R. Emmons, county clerk as aforesaid, by virtue of authority aforesaid, have hereunto subscribed my name and affixed the official seal of said county on this 7th day of September, A. D. 1881.

[SEAL.] D. R. EMMONS,
County Clerk.

STATE OF KANSAS, }
County of Wyandotte, } *ss:*

I hereby certify that before me, F. B. Anderson, a notary public in and for said county, personally appeared the above-named D. R. Emmons, clerk of said county, personally known to me to be the clerk of said county at the date of the execution of the above conveyance and to be the identical person whose name is affixed to and who executed the above conveyance as clerk of said county, and who acknowledged the execution of the same to be his voluntary act and deed as clerk of said county for the purpose therein named.

24 Witness my hand and official seal this 7th day of September, A. D. 1881.

My commission expires the 19th day of Feb'y, 1884.

[SEAL.] F. B. ANDERSON,
Notary Public.

Trans.	05
Advertising fee for deed	10
Co. cl'k's fee for deed	1 00
	$1 15

D. R. EMMONS, *Co. Cl'k.*

Endorsed: Tax deed from Wyandotte county to J. C. Stout.

STATE OF KANSAS, } ss:
Wyandotte County, }

This instrument was filed for record on the 7th day of September, A. D. 1881, at 4.10 o'clock p. m., and duly recorded in Book 15, on pages 117, 118.

J. S. CLARK,
Register of Deeds.

Fee, $1.25, paid.

I hereby certify that the within deed was entered for transfer on my transfer record this 7th day of September, 1881.

D. R. EMMONS,
County Clerk.

25 Ex. F.

Tax Deed.

Know all men by these presents that whereas the following-described real property, viz., lot No. 248, Wood street, Kansas City, Kansas, situated in the county of Wyandotte and State of Kansas, was subject to taxation for the year A. D. 1879; and whereas the taxes assessed upon said real property for the year aforesaid remained due and unpaid at the date of the sale hereinafter mentioned; and whereas the treasurer of said county did, on the 4th day of September, A. D. 1878, by virtue of the authority in him vested by law, at an adjourned sale of the sale begun and publicly held on the first Tuesday in September, 1878, expose to public sale, at the county-seat of said county, in substantial conformity with all the requisitions of the statute in such cases made and provided, the real property above described for the payment of taxes, interest, and cost then due and remaining unpaid upon said property; and whereas, at the place aforesaid, J. C. Stout, of the county of Wyandotte and State of Kansas, having offered to pay the sum of three dollars and eighty-five cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on said property, for the whole of the property as above described, which was the least quantity bid for, and payment of said sum having been by him made to the said treasurer, the said property was stricken off to him at that price;

and whereas the subsequent taxes of the years 1878, 1879, &
26 1880, amounting to the sum of eleven dollars and thirty cents, have been paid by the purchaser, as provided by law; and whereas 3 years have elapsed since the date of said sale and the said property has not been redeemed therefrom, as provided by law:

Now, therefore, I, D. R. Emmons, county clerk of the county aforesaid, for and in consideration of the sum of fifteen dollars and fifteen cents, taxes, cost, and interest due on said land for the years 1877, 1878, 1879, & 1880, to the treasurer paid as aforesaid, and by virtue of the statute in such case made and provided, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said J. C. Stout, his heirs and assigns, the real property last hereinbefore described; to have and to hold unto him, the said J. C.

Stout, his heirs and assigns forever, subject, however, to all rights of redemption provided by law.

In witness whereof I, D. R. Emmons, county clerk as aforesaid, by virtue of authority aforesaid, have hereunto subscribed my name and affixed the official seal of said county on this 7th day of September, A. D. 1881.

[SEAL.] D. R. EMMONS,
County Clerk.

STATE OF KANSAS, } ss:
County of Wyandotte, }

I hereby certify that before me, F. B. Anderson, a notary public in and for said county, personally appeared the above-named D. R. Emmons, clerk of said county, personally known to me to be the clerk of said county at the date of the execution of the above conveyance and to be the identical person whose name is affixed to and who executed the above conveyance as clerk of said county, and who acknowledged the execution of the same to be his voluntary act and deed, as clerk of said county, for the purpose therein named.

27 Witness my hand and official seal this 7th day of September, A. D. 1881.

My commission expires the 19th day of Feb'y, 1884.

[SEAL.] F. B. ANDERSON,
Notary Public.

Trans.	5
Advertising fee for deed	10
County cl'k's fee for deed	1 00
	$1 15

D. R. EMMONS,
County Clerk.

Endorsed: Tax deed from Wyandotte county to J. C. Stout.

STATE OF KANSAS, } ss:
Wyandotte County, }

This instrument was filed for record of the 7th day of ——, A. D. 1881, at 4.15 o'clock p. m., and duly recorded in Book 15, on page 119, 120.

J. S. CLARK,
Register of Deeds.

Fee, $125, paid.

I hereby certify that the within deed was entered for transfer on my transfer record this 7th day September, 1881.

D. R. EMMONS,
County Clerk.

28 Ex. G.

Tax Deed.

Know all men by these presents that whereas the following-described real property, viz., lot No. 248, Armstrong street, Kansas City, Kansas, situated in the county of Wyandotte and State of Kansas, was subject to taxation for the year A. D. 1887; and whereas the taxes assessed upon said real property for the year aforesaid remained due and unpaid at the date of the sale hereinafter mentioned; and whereas the treasurer of said county did, on the 4th day of September, A. D. 1878, by virtue of the authority in him vested by law, at an adjourned sale of the sale begun and publicly held on the first Tuesday in September, 1878, expose to public sale, at the county-seat of said county, in substantial conformity with all the requisitions of the statute in such cases made and provided, the real property above described for the payment of taxe, interests, and cost then due and remaining unpaid upon said property; and whereas, at the place aforesaid, J. C. Stout, of the county of Wyandotte and State of Kansas, having offered to pay the sum of three dollars and forty-five cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on said property, for the whole of the property as above described, which was the least quantity bid for, and payment of said sum having been by him made to the said treasurer, the said property was stricken off to him at that price; and whereas the subsequent taxes of the years 1878,
29 1879, & 1880, amounting to the sum of ten dollars and fifty-seven cents, have been paid by the purchaser, as provided by law; and whereas 3 years have elapsed since the date of said sale and the said property has not been redeemed therefrom, as provided by law:

Now, therefore, I, D. R. Emmons, county clerk of the county aforesaid, for and in consideration of the sum of fourteen dollars and two cents, taxes, cost, and interest due on said land for the years 1877, 1878, 1879, & 1880, to the treasurer paid as aforesaid, and by virtue of the statute in such case made and provided, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said J. C. Stout, his heirs and assigns, the real property last hereinbefore described; to have and to hold unto him, the said J. C. Stout, his heirs and assigns forever, subject, however, to all rights of redemption provided by law.

In witness whereof I, D. R. Emmons, county clerk as aforesaid, by virtue of authority aforesaid, have hereunto subscribed my name and affixed the official seal of said county on this 7th day of September, A. D. 1881.

[SEAL.] D. R. EMMONS,
County Clerk.

STATE OF KANSAS, }
County of Wyandotte, } *ss:*

I hereby certify that before me, F. B. Anderson, a notary public in and for said county, personally appeared the above-named D. R.

Emmons, clerk of said county, personally known to me to be the clerk of said county at the date of the execution of the above conveyance and to be the identical person whose name is affixed to and who executed the above conveyance as clerk of said county, and who acknowledged the execution of the same to be his voluntary act and deed, as clerk of said county, for the purpose therein named.

30 Witness my hand and official seal this 7th day of September, A. D. 1881.

My commission expires the 19th day of Feb'y, 1884.

[SEAL.] F. B. ANDERSON,
Notary Public.

Endorsed: Tax deed from Wyandotte county to J. C. Stout.

STATE OF KANSAS, }
Wyandotte County, } *ss:*

This instrument was filed for record on the 7th day of September, A. D. 1881, at 4.30 o'clock p. m., and duly recorded in book 15, on pages 124, 125.

J. S. CLARK,
Register of Deeds.

Fee, $1.25, paid.

I hereby certify that the within deed was entered for transfer on my transfer record this 7th day of September, 1881.

D. R. EMMONS,
County Clerk.

31 In the Circuit Court of the United States for the District of Kansas.

J. J. MASTIN (formerly Kersey Coates) }
vs. }
J. C. STOUT. }

Demurrer.

Defendant demurs to the evidence of plaintiff upon the ground that the same is not sufficient in law to entitle the plaintiff to any relief.

HUTCHINGS & KEPLINGER,
Att'ys for Def't.

Endorsed: 5851. Kersey Coates *vs.* J. C. Stout. Demurrer to evidence. Filed June 28th, 1889. Geo. F. Sharitt, clerk.

UNITED STATES OF AMERICA, }
District of Kansas, } *ss:*

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Leavenworth,

in said district, on Monday, the 3rd day of June, 1888, proceedings were had and appear of record in words and figures following, to wit:

FRIDAY, *June 28th*, 1889.

KERSEY COATES, Assignee of Mastin Bank, Plaintiff,
vs.
J. C. STOUT, Defendant. } 5851.

It is ordered by the court that the defendant have 10 days to file brief herein; plaintiff 10 days thereafter to reply.

32 In the Circuit Court of United States for Kansas.

J. J. MASTIN, Plaintiff,
vs.
J. C. STOUT, Defendant. } Stipulation.

In the above-entitled case the clerk is hereby authorized to insert "$1,309.51" in the blank left in the journal entry, showing the amount of taxes paid by defendant; also in the findings of fact, in the sixth finding, in the last column, under the head of "aggregate, etc.," wherever "$8.40" appears change the "3" to a "2;" then draw the pen through each "2.40" and directly over it write "3.30, thus: 3.30. This is intended to make the sixth finding of fact a fac simile of the original.

JOHNSON, MARTIN & KEELER,
T. A. FRANK JONES,
Attorneys for Plaintiff.
HUTCHINGS & KEPLENGER,
Attorney for Defendant.

TUESDAY, *August 6th*, 1889.

JOHN J. MASTIN, Plaintiff,
vs.
J. C. STOUT, Defendant.

And now, on this 6th day of August, A. D. 1889, and of the June term of the circuit court of the United States for the district of Kansas, the above-entitled action came duly and regularly on for trial, the plaintiff appearing by Frank Jones, Esq., and by Johnson, Martin & Keeler, his attorneys, and the defendant by Hutch-
33 ings & Keplinger, his attorneys; and a jury being duly waived in writing, signed by plaintiff and defendant and with their consent, this cause is submitted to the court for trial; and thereupon the parties respectively offer their evidence, and after argument of counsel and the cause being duly considered by the court, the court, upon written request of the parties to make special findings of the facts and conclusions of law therefrom, does find as such facts.

In the Circuit Court of the United States for the District of Kansas.

J. J. MASTIN, Plaintiff,
vs.
J. C. STOUT, Defendant.
} Findings of Fact.

From the pleadings and evidence introduced upon the trial the court does find—

I.

That defendant is in possession of lots mentioned in the petition, claiming title by virtue of tax deeds set up in the pleadings, which deeds were executed as therein stated.

II.

The printer's proof of publication of the notice of the tax sale upon which said deeds were based consisted of an affidavit of the printer of the Wyandotte Gazette, the same being a weekly newspaper printed and of general circulation in Wyandotte county, which affidavit stated that "the notice, of which the annexed is a full, true, and perfect copy, was published in the Wyandotte Gazette for four consecutive weeks, the first publication being on the 26th day of July, 1878."

Said affidavit was attached to a copy of said Wyandotte Gazette and to that portion thereof which contained the following:

"*Wyandotte County Delinquent Tax-List for the Year A. D.* 1877.

34 Notice is hereby given that so much of each tract of land or town lot described in the following list as may be necessary for that purpose will, on the first Tuesday of (3d) September, A. D. 1878, and the next succeeding days, be sold at public auction by the treasurer of Wyandotte county, Kansas, at the treasurer's office, in Wyandotte city, for the taxes and charges due thereon.

E. S. W. DROUGHT,
Treasurer of Wyandotte County, Kansas.

Wyandotte city, July 25, 1878."

III.

Immediately following the foregoing in said copy of said paper was a long list of descriptions of tracts of land and town lots, among which descriptions were the following:

Lots.	Street.
95, 97, 105, 127, 129, 131, 133, 239, 241, 242, 259	James.
150, 152, 188, 190, 244, 246, 248, 250, 252, 103, 105, 129, 131, 133, 147, 149, 151	Wood.
98, 100, 102, 104, 106, 124, 126, 128, 130, 132, 134, 152, 198, 245, 246, 248, 252, 260	Armstrong.

IV.

On page 8 of the tax-roll of Kansas City, Kansas, for the year 1877 appears the following:

Tax-Roll Kansas City Lots, Wyandotte County, Kas., 1877.

Supposed owner.	Lot.	Bl'k, James.	Valuation.	Aggregate tax.	Road tax.	School tax.	Total tax for 1877.	Penalty, Dec. 21, 1877.	Penalty, March 21, 1878.	Penalty, June 21, 1878.	Aggregate of tax and penalty remaining unpaid July 16, 1878.
*	*	*	*	*	*	*	*	*	*	*	*
T. J. Bigger.....	241	.....	90	3 33	27	54	4 14	20	20	20	4 74

35

V.

On page 13 of said tax-roll appears the following:

Tax-Roll Kansas City Lots, Wyandotte County, Kansas, 1887.

Supposed owner.	Lot.	Bl'k, Wood.	Valuation.	Aggregate tax.	Road tax.	School tax.	Total tax for 1877.	Penalty, Dec. 21, 1877.	Penalty, M'ch 21, 1878.	Penalty, June 21, 1878.	Aggregate of tax and penalty remaining unpaid July 16, 1878.
*	*	*	*	*	*	*	*	*	*	*	*
T. J. Bigger.....	248	.....	70	2 59	21	42	3 22	16	16	16	3 70

VI.

On page 18 of the tax-roll of 1877 appears the following:

Tax Roll Kansas City Lots, Wyandotte County, Kansas, 1877.

Supposed owner.	Lot.	Bl'k, Armstrong.	Valuation.	Aggregate State, county, and city tax.	Road tax.	School tax.	Total tax for 1877.	Penalty, Dec. 21, 1877.	Penalty, M'ch 21, 1878.	Penalty, June 21, 1878.	Aggregate of tax and penalties remaining unpaid July 16, 1878.
*	*	*	*	*	*	*	*	*	*	*	*
T. J. Bigger	246	.....	65	2 40	19	39	2 98	14	14	14	3 30
"	248	.....	65	2 40	19	39	2 98	14	14	14	3 30
"	250	.....	65	2 40	19	39	2 98	14	14	14	3 30
"	252	.....	65	2 40	19	39	2 98	14	14	14	3 30
"	260	.....	65	2 40	19	39	2 98	14	14	14	3 30

VII.

Each page of said tax-roll is ruled into perpendicular columns, with printed headings. On each page there is one column, with the printed word "lot" appearing as the heading of one column. The next column on each page has for a heading the printed letters "bl'k."

VIII.

On the first page of the tax-roll, immediately underneath the printed heading "bl'k," appear the written words "Ewing street." Underneath the printed heading "bl'k," on some of the remaining pages, appears the written word "Joy" in the same position; on other pages, the word "James;" on others, the word "Wood," and on others, the word "Armstrong" in writing.

36 IX.

Upon the plat of Kansas City, Kansas, and in conveyances of land and in tax-sale proceedings in the old city of Kansas City, Kansas, the lots are numbered by streets and not by the block, and "Ewing," "Joy," "James," "Wood," and "Armstrong" are names of streets in said city.

X.

The printer's proof of the publication of the redemption notice, upon which said deeds were based, consisted of an affidavit of the printer of the Wyandotte Gazette, the same being a weekly newspaper printed and of general circulation in Wyandotte county, which affidavit stated that "the notice, of which the annexed is a full, true, and perfect copy, was published in said paper for five consecutive weeks, the first publication being on the 25 day of March, 1881." Said affidavit was attached to a copy of said paper of said last-mentioned date and to that portion thereof which contained the following:

"*Wyandotte County Delinquent Tax-List.*

I hereby certify that the annexed schedule contains a correct list of all unredeemed lands and town lots sold by the treasurer of Wyandotte county, Kansas, on the days specified therein, with a statement to whom they were assessed and the amount of taxes charged and interest calculated to the last days of redemption on each parcel of land or town lot; and notice is hereby given that unless said lands or town lots be redeemed on or before the time limited therefor, as herein specified, they will be conveyed to the purchaser in the manner prescribed by law.

Wyandotte, Kansas, March 21st, 1881.

WILLIAM ALBRIGHT,
Treasurer of Wyandotte Co., Kas."

37 XI.

Immediately following the foregoing in said copy of said paper there appeared a large list of descriptions—numbers and figures—appearing under the headings "owner," "lot," "No. street," "am't," preceded by the words "date of sale, Sept. 4, 1878; to be redeemed on or before Sept. 5, 1881," in which list, under the sub-head "lots in Kansas City," appeared the following:

Owner.	Lot.	No. Street.	Am't.
W. T. Bigger	241	James	38 25
*	*	*	*
T. J. Bigger	248	Wood	29 80
T. J. Bigger	246	Armstrong	25 95
Do.	248	Do.	25 95
Do.	250	Do.	25 95
Do.	260	Do.	25 95

XII.

One copy of the paper containing said notice was duly posted by the treasurer in his office, as required by law, and copies of the paper containing the same in excess of the number required by the statute were mailed to various postmasters in the county by the treasurer, with a request to post the same. The parties to whom the same were sent were reliable parties and friends and acquaintances of the treasurer.

And as conclusions of law the court does find:

Conclusions of Law.

From the foregoing facts the court finds as conclusions of law:

1st. That the facts found are not sufficient in law to show any failure to publish the notice of tax sale and the accompanying list, as required by law, excepting a variance in the description of the property by inserting street for bl'k.

38 2nd. The facts found are not sufficient in law to show a failure to publish the redemption notice and accompanying list, as required by law, excepting a variance in description, as above stated.

3d. The facts found are not sufficient in law to show a failure to post the redemption notice and accompanying list, as required by law.

4th. That the facts found are not sufficient in law to show that the deeds do not correctly recite the full amount of taxes, penalty, costs, and charges against the land sold.

5th. That the tax deeds are invalid by reason of the misdescription of the lots, as set out in findings of fact from four to nine, inclusive.

6th. That plaintiff was at the commencement of this action the owner of & entitled to recover the possession of said real estate.

C. G. FOSTER, *Judge.*

Endorsed: No. 5851. Findings of fact and conclusions of law. Filed August 6, 1889. Geo. F. Sharitt, clerk.

And to the first, second, fifth, and sixth of the above conclusions

of law defendant excepts as being contrary to law, and pl't'ff excepts to conclusions of law Nos. 1, 2, 3, & 4.

And thereupon said cause comes further on to be heard upon the motion of defendant to set aside the conclusions of law above excepted to and for judgment in favor of defendant upon the facts; which motion the court does overrule; to which ruling defendant excepts; and thereupon, upon motion of plaintiff for judgment upon the said findings of fact and conclusions of law, the court does consider, order, and adjudge that plaintiff do have and recover of and from the defendant the title to and possession of said lots, to wit, lot 248, on Wood street; lot 241, on James street; lot 246, on
39 Armstrong street; lot No. 248, on Armstrong street; lot No. 250, on Armstrong street; lot No. 252, on Armstrong street, and lot No. 260, on Armstrong street, all in Kansas City, in the county of Wyandotte, in the State of Kansas, and that plaintiff have and recover from defendant his costs, taxed at —.

The court does find that defendant is entitled to a lien upon said real estate for the taxes paid by him, amounting in the aggregate to the sum of $—.

The court does find that defendant has made permanent and valuable improvements on said lots, and is an occupying claimant within the meaning of art. 25 of the Code of Civil Procedure, and said lots are of a value exceeding five thousand dollars.

Endorsed: 5851. John J. Mastin *vs.* J. C. Stout.

40 In the Supreme Court of the United States of America.

J. C. STOUT, Plaintiff in Error,
vs.
J. J. MASTIN, Defendant in Error. } Supersedeas Bond.

Know all men by these presents that we, J. C. Stout, as principal, and James Kirkbride and S. H. Mileham, as sureties, of Kansas City, Kansas, are held and firmly bound unto J. J. Mastin, of Kansas City, Missouri, in the sum of two thousand dollars, to be paid to the said J. J. Mastin, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 14th day of September, 1889.

Whereas the said above-named J. C. Stout has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the circuit court of the United States for the district of Kansas:

Now, therefore, the condition of this obligation is such that if the above-named J. C. Stout shall prosecute his said writ of error to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

J. M. KIRKBRIDE.
SAM. H. MILEHAM.

41 STATE OF KANSAS, } ss:
County of Wyandotte, }

James Kirkbride and S. H. Mileham, each for himself, separately swears that he is a resident of Wyandotte county, State of Kansas, and that he is worth the sum set opposite his signature hereto over and above all exemptions, debts, and liabilities.

J. M. KIRKBRIDE. $2,000.00.
SAM. H. MILEHAM. $2,000.00.

Subscribed in my presence and sworn to before me this 14th day of September, 1889.

[SEAL.] B. JACOBS,
Notary Public.

My commission will expire June 26, 1892.

Approved.
C. G. FOSTER, *Judge.*

Endorsed: No. 5851. Bond. Filed Oct. 7, 1889. Geo. F. Sharitt, clerk.

42 UNITED STATES OF AMERICA, } ss:
District of Kansas, }

I, Geo. F. Sharitt, clerk of the circuit court of the United States of America for the district of Kansas, do hereby certify the foregoing to be a true, full, and correct copy of the record and proceedings in said court in the action of John J. Mastin *vs.* J. C. Stout, number 5851.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Topeka, in said district of Kansas, this seventh day of October, A. D. 1878.

[The Seal of the Circuit Court of the United States, District of Kansas, 1862.]

GEO. F. SHARITT, *Clerk.*

43 In the Supreme Court of the United States.

J. C. STOUT, Plaintiff in Error,
vs.
J. J. MASTIN, Defendant in Error. } Assignment of Errors.

— of December, in the year of our Lord one thousand eight hundred and eighty-nine.

Afterwards, to wit, on the first Monday of this same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said J. C. Stout, by —— ——, his attorney, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit:

1. That the first conclusion of law made by the court below from the findings of fact is contrary to law.

2. That the second conclusion of law made by the court below from the findings of fact is contrary to law.

3. That the fifth conclusion of law made by the court below from the findings of fact is contrary to law.

4. That the sixth conclusion of law made by the court below from the findings of fact is contrary to law.

5. That the court below rendered judgment in favor of the defendant in error when such judgment should have been in favor of the plaintiff in error.

And the said J. C. Stout prays that the judgment aforesaid may be reversed and annulled and altogether held for naught, and that he may be restored to all things which he has lost by occasion of the said judgment, and that judgment be rendered in favor of plaintiff in error and against the defendant in error.

GEO. W. McCRARY,
Attorney for Plaintiff in Error.

44 *Citation.*

THE UNITED STATES OF AMERICA, *ss:*

To J. J. Mastin or his attorney of record, Frank Jones, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Kansas, in a certain action, wherein J. C. Stout is plaintiff in error and J. J. Mastin is defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned shall not be corrected and speedy justice should not be done in that behalf.

Witness the Honorable C. G. Foster, judge of the circuit court of the United States for the district of Kansas, this seventh day of October, 1889.

C. G. FOSTER,
Judge of the Circuit Court.

Witness my hand and official signature, at Topeka, the capital of the State of Kansas, this seventh day of October, 1889.

[The Seal of the Circuit Court of the United States, District of Kansas, 1862.]

GEO. H. SHARITT,
Clerk of the Circuit Court of the United States for District of Kansas.

I hereby certify that the above and foregoing is a true and correct copy of the original citation —.

____ ____,
One — the Att'ys of Record for Def't.

44½

U. S. Marshal's Return.

Received this writ Oct. 7th, '89, and executed the same at Shawnee county, State and district of Kansas, on the 7th Oct., 1889, by delivering a true and certified copy of this writ to Judge John Martin, attorney of record for the defendant.

R. L. WALKER, *U. S. Marshal,*
By L. D. DE BOST, *Deputy.*

Fees, $2.00.

45 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Kansas, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea which is in the said circuit court, before you, between John J. Mastin, plaintiff, and J. C. Stout, defendant, a manifest error hath happened, to the great damage of the said J. C. Stout, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 7th day of October, A. D. 1889.

GEO. F. SHARITT,
Clerk of the Circuit Court of the United States for the District of Kansas.

Allowed.
C. G. FOSTER, *Judge.*

[Endorsed:] No. 5851. J. C. Stout, plaintiff in error, *vs.* John J. Mastin, defendant in error. Writ of error. Filed Oct. 7, 1889. Geo. F. Sharitt, clerk.

Endorsed on cover: Kansas C. C. U. S. No. 1072. J. C. Stout, plaintiff in error, *vs.* John J. Mastin. Filed November 2, 1889.

Supreme Court of the United States. October Term, 1890.

J. C. STOUT, Plaintiff in Error,
vs.
JOHN J. MASTIN. } No. 1072.

The grounds of the jurisdiction of the circuit court are not sufficiently disclosed by the record in this cause as it stands, and the consideration of the cause is therefore postponed for the present in order that counsel may take such measures to supply the existing defects as they may be advised and may be able to do.

January 19, 1891.

In the District Court of Wyandotte County, State of Kansas.

KERSEY COATES, Assignee of the Mastin Bank, Plaintiff,
vs.
J. C. STOUT, Defendant.

I, A. Smith Devenney, being first duly sworn, do say that I am the attorney for the above-named plaintiff in the above-entitled cause, and that owing to the illness of the said Kersey Coates, who is confined to his bed and unable to transact any business, this affidavit is made by his said attorney, and that I have reason to believe and do believe that from prejudice and local influence the said plaintiff will not be able to obtain justice in said district court of Wyandotte county, Kansas.

A. SMITH DEVENNEY.

Subscribed in my presence and sworn to before me this 7th day of December, A. D. 1886.

L. C. TRICKEY,
Clerk Dist. Court.

[SEAL.]

Endorsed: Filed Dec. 7, 1886. L. C. Trickey, clerk, by M. Y. Trickey, deputy.

Petition.

In the District Court of Wyandotte County, State of Kansas.

KERSEY COATES, Assignee of the Mastin Bank, Plaintiff,
vs.
J. C. STOUT, Defendant.

Petition for removal to the circuit court of the United States, district of Kansas.

To the honorable the district court of Wyandotte county, State of Kansas:

The petition of Kersey Coates respectfully represents to this honorable court that at the time of the commencement of this suit he

was and still is a citizen of the State of Missouri, and that J. C. Stout was and still is a citizen of the State of Kansas, and that the amount in dispute, exclusive of costs, exceeds the sum or value of five hundred dollars; that he files herewith an affidavit stating that he has reason to believe and does believe that from prejudice and local influence he will not be able to obtain justice in this court.

Your petitioner makes and files herewith a bond, with good and sufficient surety, for his entering in the circuit court of the United States for the district of Kansas, on the first day of its next session, a copy of the record in this suit and for paying all costs that may be awarded by the said circuit court if said circuit court shall hold that this suit has been wrongfully or improperly removed thereto.

Your petitioner therefore prays this honorable court to accept this petition and the said bond and order the transfer of said suit to said circuit court of the United States for the district of Kansas.

A. SMITH DEVENNEY,
Att'y for Plaintiff.

STATE OF KANSAS, }
Wyandotte County, } *ss:*

I, A. Smith Devenney, being first duly sworn, do say that I am the attorney for the above-named petitioner in the above-entitled cause, and that owing to the illness of the said petitioner, Kersey Coates, being now confined to his bed and unable to transact any business, this affidavit is made by his said attorney, and that I know the contents of the foregoing petition, and that the same is true of my own knowledge.

A. SMITH DEVENNEY.

Subscribed and sworn to before me this 7th day of December, A. D. 1886.

L. C. TRICKEY,
[SEAL.] *Clerk Dist. Court.*

Endorsed: Coates, assignee, *vs.* J. C. Stout. Petition for removal to U. S. circuit court. Filed Dec. 7, 1886. L. C. Trickey, clerk, by M. Y. Trickey, deputy. A. Smith Devenney, att'y for plaintiff.

Bond.

Know all men by these presents that I, Kersey Coates, as principal, and John J. Mastin and Thomas H. Mastin, of the State of Missouri, and N. McAlpine, of the State of Kansas, as sureties, are held and firmly bound unto J. C. Stout, of Wyandotte county, Kansas, in the penal sum of five hundred dollars; for the payment whereof, well and truly to be made unto the said J. C. Stout, his heirs, representatives, and assignees, we bind ourselves, our heirs, representatives, and assigns, jointly and severally, firmly by these presents.

Yet upon these conditions: The said Kersey Coates having petitioned the district court of Wyandotte county, State of Kansas, for the removal of a certain cause therein pending, wherein Kersey

Coates is plaintiff and J. C. Stout is defendant, to the circuit court of the United States in and for the district of Kansas:

Now, if the said Kersey Coates, your petitioner, shall enter in the said circuit court of the United States on the first day of its next session a copy of the record in said suit and shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise in full force and virtue.

Witness our hands and seals *of* this 7th day of December, A. D. 1886.

JOHN J. MASTIN. [SEAL.]
THOMAS H. MASTIN. [SEAL.]
NICHOLAS McALPINE. [SEAL.]

STATE OF KANSAS, } ss:
County of Wyandotte, }

I, N. McAlpine, one of the sureties named in the foregoing bond, being duly sworn, do depose and say that I am a resident of the State of Kansas and a property-holder therein; that I am worth the sum of five hundred dollars over and above all my debts and liabilities and exclusive of property by law exempt from execution; that I have property in the State of Kansas liable to execution of the value of more than five hundred dollars.

NICHOLAS McALPINE.

Subscribed in my presence by the said —— —— and by him sworn to before me this 7th day of Dec., A. D. 1886.

A. N. MOYES,

[SEAL.] *Notary Public, Wyandotte County, Kansas.*

My term expires March 10, 1889.

The within bond and the sureties thereto approved by me this 18th day of December, 1886.

J. P. HINDMAN,

Judge of the 10th Judicial District of the State of Kansas.

Endorsed: Bond for removal of cause under act of 1875. Coates, plaintiff, against J. C. Stout, defendant. Filed the 7th day of December, 1886. L. C. Trickey, clerk.

THE STATE OF KANSAS, } ss:
Tenth Judicial District, Wyandotte County, }

At a session of the district court sitting within and for said county of Wyandotte begun and held at the court-house, in the city of Wyandotte, in said county, on the 6th day of December, 1886, as by statute required—there being present Hon. J. C. Hindman, judge of said judicial district, and James Ferguson, sheriff, and L. C. Trickey, clerk of the district court of said county—the following proceedings are had:

SATURDAY, *December 18th, A. D.* 1886.

KERSEY COATES, Assignee of the Mastin Bank,
vs.
J. C. STOUT. } No. 3321.

At this day comes plaintiff, by his attorney, A. S. Devenney, and files his petition, affidavit, and bond for removal of this cause to the circuit court of the United States in and for the district of Kansas in manner and form as required by law, and the court now approves said bond and surety thereon and orders that this court proceed no further herein, and that this cause be removed into the circuit court of the United States in and for the district of Kansas.

And the clerk of this court is hereby ordered to make and transmit to said circuit court, as required by law, the record in this cause; to the entry of which order defendant duly excepts.

STATE OF KANSAS, } *ss:*
County of Wyandotte, }

I, L. C. Trickey, clerk of district court in and for said county and State, hereby certify that above and foregoing is a full, true, and complete transcript of the record of the case of Kersey Coates, assignee of Mastin Bank, *vs.* J. C. Stout, No. 3321 (except opinion of supreme court), as fully as same appears of record and on file in my office.

Witness my hand and seal of said court Dec. 29, 1886.

[SEAL.] L. C. TRICKEY,
Clerk District Court, Wyandotte County, Kansas.

A copy of opinion of supreme court in above case is attached to case of Kersey Coates, assignee, &c., *v.* F. Kirkbride, No. 3320.

L. C. TRICKEY, *Clerk.*

Costs in district court, paid by pl'ff $21 20
Transcript of record, paid by pl'ff 9 00

Endorsed: No. 5851. Kersey Coates, assignee, *v.* J. C. Stout. Filed Jan. 6, 1887. A. S. Thomas, clerk, by Frank H. Holt, deputy.

UNITED STATES OF AMERICA, } *ss:*
District of Kansas, }

I, Geo. F. Sharitt, clerk of the circuit court of the United States of America for the district of Kansas, do hereby certify the foregoing to be a true, full, and correct copy of affidavit of A. Smith Devenney, petition for removal, bond for removal, order removing, and certificate of the clerk from the transcript of the record in the district court of Wyandotte county, Kansas, in the action of Kersey Coates, assignee, *vs.* J. C. Stout, and that the same is a copy of all I find upon record pertaining to the removal of said action to the circuit court of the United States for the district of Kansas.

The Seal of the Circuit Court of the United States, District of Kansas, 1862.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, at Topeka, in said district of Kansas, this 27th day of January, A. D. 1891.

GEO F. SHARITT, *Clerk.*

[Endorsed:] Supreme Court U. S. 1890, October term. No. 1072. J. C. Stout, pl'ff in error, *vs.* John J. Mastin. Order of court & addition to record.

[Stamped:] Office Supreme Court U. S. Filed Jan. 31, 1891. James H. McKenney, clerk.

Office Supreme Court U. S.
FILED.
JAN 9 1891
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States,

October Term, 1890.

J. C. STOUT,
Plaintiff in Error,
vs.
JOHN J. MASTIN,
Defendant in Error.

No. 1072.

BRIEF AND ARGUMENT OF PLAINTIFF IN ERROR

HUTCHINGS & KEPLINGER,
Attorneys for Plaintiff in Error.

Supreme Court of the United States,

October Term, 1890.

J. C. STOUT,
Plaintiff in Error,
vs.
JOHN J. MASTIN,
Defendant in Error.

No. 1072.

BRIEF AND ARGUMENT OF PLAINTIFF IN ERROR

I.

STATEMENT OF FACTS.

This was an action brought by the defendant in error for the recovery of certain lots in Kansas City, Kansas.

P. 1 of Record.

The defendant below the plaintiff in error claimed a right to the possession of the lot solely by reason of certain tax deeds.

P. 5 of Record.

The validity of these deeds, therefore, was the sole matter to be determined.

At the written request of the parties the court made

special findings, which were in substance to the effect that the tax sale proceedings were regular and valid in every respect, "except a variance in the description of the property by inserting 'street' for 'block'" (first conclusion of law *infra*), and "that the tax deeds were invalid by reason of the misdescription of the lots as set out in findings of fact from four to nine inclusive" (fifth conclusion of law *infra*).

An examination of the findings referred to, which appear within, shows the precise nature of the alleged misdescription was this:

Upon the plat of Kansas City, Kansas, and in conveyances of land and in tax sale proceedings, lots in said city "are numbered by streets and not by blocks" (ninth finding *infra*), and in the tax sale proceedings upon which the deeds in question were based the lots were described by giving the number of the lot and the name of the street, while nothing is said as to the lots being in any particular block.

The court held that the description of the lot by the street instead of by the block was a fatal misdescription, by reason of which the tax deeds were invalid.

While there are several assignments of error, they all depend upon the correctness of such decision.

II.

STATUTORY PROVISIONS REFERRED TO HEREIN.

"In all advertisements, certificates, papers or proceedings relating to the assessment and collection of taxes and proceedings founded thereon, any descrip-

tion of lands which shall indicate the land intended with ordinary and reasonable certainty, and which would be sufficient between grantor and grantee in an ordinary conveyance, shall be sufficient."

See. 153, Chap. 107, Gen. Stat. 1889.

"No irregularity in the assessment roll nor omission from the same, nor mere irregularities of any kind in any of the proceedings, shall invalidate any such proceedings or the title conveyed by the tax deed, nor shall any failure of any officer or officers to perform the duties assigned him or them upon the day specified, work any invalidation of any such proceeding or of such deed."

Section 139 ib.

"Each assessor shall make out, from such sources of information as shall be within his reach, a correct and pertinent description of each piece, parcel or lot of real property in numerical order as to lots and blocks, sections and subdivisions, in his township or city, as the case may be."

Ib. Sec. 44.

"The county treasurer shall give each purchaser, on payment of his bid, a certificate dated the day of the sale, describing the lands purchased, the amount bid therefor, and the time the purchaser will be entitled to a deed."

Sec. 116 ib.

"The county treasurer shall, immediately after the close of the sale of land for taxes, record a list of all lands and town lots in a book prepared for that purpose.

"Said list shall contain: 1. The number of certificate of sale and the date thereof. 2. The name of the owner or owners, if known. 3. The description of each tract of land or town lot. * * * 10. Name of person to whom conveyed and date of deed. 11. The county clerk shall also make a duplicate thereof."

Sec. 120 ib.

"The county treasurer shall file with the county clerk all affidavits, notices of papers of reference to each tax sale, to be preserved by him."

Ib. 121.

"If any land sold for taxes shall not be redeemed within three years from the day of sale the county clerk of the county where the same was sold shall, on presentation of a certificate of sale executed in the name of the county, as county clerk, under his hand and seal of the county, issue to the purchaser, his heirs and assignees, a deed to the land so remaining unredeemed, and shall acknowledge the same, which shall vest in the grantee an absolute estate in fee simple in such land, subject, however, to all unpaid taxes and charges, which are a lien thereon, and such deed, duly acknowledged, shall be *prima facie* evidence of the regularity of all the proceedings from the valuation of the land by the assessor, inclusive, to the execution of the deed, and

may be recorded with like effect as other conveyances to land."

Ib. 138.

"Whenever any city or town, or any addition to any city or town, shsll be laid out, the proprietor or proprietors of such city or town, or addition, shall cause to be made out an accurate map or plat thereof, particularly setting forth and describing, first, all parcels of ground within such city or town, or addition, reserved for public purposes, by their boundaries, course and extent—whether they be intended for avenues, streets, lanes, alleys, commons, or other public uses; and, second, all lots intended for sale, by numbers, and their precise length and width."

Sec. 1, Chap. 78, Gen. Stat. 1889.

III.

CONCLUSIONS OF LAW.

Record, page 22.

"1st. That the facts found are not sufficient in law to show any failure to publish the notice of tax sale and the accompanying list, as required by law, excepting a variance in the description of the property by inserting street for bl'k.

38 "2nd. The facts found are not sufficient in law to show a failure to publish the redemption notice and accompanying list, as required by law, excepting a variance in description, as above stated.

"3d. The facts found are not sufficient in law to

show a failure to post the redemption notice and accompanying list, as required by law.

"4th. The facts found are not sufficient in law to show that the deeds do not correctly recite the full amount of taxes, penalty, costs, and charges against the land sold.

"5th. That the tax deeds are invalid by reason of the misdescription of the lots, as set out in findings of fact from four to nine, inclusive.

"6th. That plaintiff was, at the commencement of this action, the owner of and entitled to recover the possession of said real estate.

"C. G. FOSTER, *Judge*."

FINDINGS OF FACT.

From 4 to 9, inclusive, mentioned in Conclusions of Law:

Page 20 of Record.

IV.

"On page 8 of the tax-roll of Kansas City, Kansas, for the year 1877, appears the following:

Tax-Roll Kansas City Lots, Wyandotte County, Kas., 1877.

Supposed owner.	Lot.	Bl'k, James.	Valuation.	Aggregate tax.	Road tax.	School tax.	Total tax for 1887.	Penalty, Dec. 21, 1877.	Penalty, March 21, 1878.	Penalty, June 21, 1878.	Aggregate of tax and penalty remaining unpaid June 16, 1878.
*	*	*	*	*	*	*	*	*	*	*	*
T. J. Bigger.	241	.....	90	3 33	27	54	4 14	20	20	20	4 74

35 V.

"On page 14 of said tax-roll appears the following:

Tax-Roll Kansas City Lots, Wyandotte County, Kansas, 1887.

Supposed owner.	Lot.	Bl'k, Wood.	Valuation.	Aggregate tax.	Road tax.	School tax.	Total tax for 1877.	Penalty, Dec. 21, 1877.	Penalty, March 21, 1878.	Penalty, June 21, 1878.	Aggregate of tax and penalty remaining unpaid July 16, 1878.
*	*	*	*	*	*	*	*	*	*	*	*
T. J. Bigger..	248	.....	70	2 59	21	42	3 22	16	16	16	3 70

VI.

"On page 18 of the tax-roll of 1877 appears the following:

Tax-Roll of Kansas City Lots, Wyandotte County, Kansas, 1877.

Supposed owner.	Lot	Bl'k, Armstrong.	Valuation.	Aggregate State, county and city tax.	Road tax.	School tax.	Total tax for 1877.	Penalty, Dec. 21, 1877.	Penalty, March 21, 1878.	Penalty, June 21, 1878.	Aggregate of tax and penalties remaining unpaid July 16, 1878.
*	*	*	*	*	*	*	*	*	*	*	*
T. J. Bigger..	246	.....	65	2 40	19	39	2 98	14	14	14	3 30
"	248	.....	65	2 40	19	39	2 98	14	14	14	3 30
"	250	.....	65	2 40	19	39	2 98	14	14	14	3 30
"	252	.....	65	2 40	19	39	2 98	14	14	14	3 30
"	260	.....	65	2 40	19	39	2 98	14	14	14	3 30

VII.

"Each page of said tax-roll is ruled into perpendicular columns, with printed headings. On each page there is one column with the printed word 'lot' appearing as the heading of one column. The next column on each page has for a heading the printed letters 'bl'k.'

VIII.

"On the first page of the tax-roll, immediately underneath the printed heading 'blk,' appear the written words 'Ewing street.' Underneath the printed heading 'bl'k,' on some of the remaining pages, appears the written word 'Joy' in the same position; on other pages, the word 'James;' on others, the word 'Wood,' and on others, the word 'Armstrong' in writing.

36 IX.

"Upon the plat of Kansas City, Kansas, and in conveyances of land and in tax-sale proceedings in the old city of Kansas City, Kansas, the lots are numbered by streets and not by the block, and 'Ewing,' 'Joy,' 'James,' 'Wood,' and 'Armstrong' are names of streets in said city."

ARGUMENT.

At the outset we call attention to what we deem a controlling fact—one which should be borne in mind at every step in the consideration of this case.

So far as any question as to the *description of the land* is concerned, the general rule that tax-sale proceedings are to be construed strictly has no existence in Kansas.

Section 153, cited *supra*, works a radical innovation in this respect. Whether it be in the original assessment, notice of sale, tax roll, certificate of sale, tax-sale book, redemption notice, or deed, "any description of lands which shall indicate the land with ordinary and reasonable certainty, and which would be sufficient be-

tween grantor and grantee in an ordinary conveyance, shall be sufficient."

Therefore, in determining as to the alleged misdescription relied on by the court below, we are to look elsewhere than the text books or decisions relating to tax-sale proceedings.

We do not overlook the fact that the statute, section 44 *supra*, expressly requires the assessment roll, which is the basis of the entire proceeding, to give the number of the block.

This statute, as well as the decision of the court, is based upon the assumption that in all cases cities are subdivided into blocks, and not only so, but that these blocks are numbered instead of named. That such assumption is correct as to the case at bar does not appear. If it be not correct, there certainly was no irregularity in failing to give the number of the block instead of the street, because it was not possible to follow the statute.

Magee vs. Martin, 14 Kansas, 81.

If, however, such asssumption be correct, the fact remains that in referring to the street instead of block, the description, which is precisely the same as that of the lots sued for by plaintiff as given in his petition, locates the lots with no less certainty than if the law had been literally complied with. The description followed in the tax-sale proceedings and in the tax deeds is that which is used in conveyances of lots in Kansas City. (See 9th finding.) That the defendant himself regards it as amply sufficient to locate the land appears

from the petition in this very case. The description of the lots sued for contains no reference to blocks.

That the location of the lots by reference to streets instead of blocks was at most a mere irregularity which must be disregarded under the provisions of 139 and 153, would seem too plain for argument.

We do not overlook the fact strenuously insisted upon by opposite counsel, that in the description on the tax roll the word "street" was omitted after the words "James," "Joy," "Wood" and "Armstrong." The court was probably of opinion that from extraneous facts shown in evidence it sufficiently appeared that by the words "James," "Joy," &c., streets of those names were intended. Indeed, the findings themselves amply show such was the intention. At any rate, the decision of the court below in no way depends upon the omission under consideration.

Section 153 applies to each and every description in the tax-sale proceedings, and it was entirely proper for the court to construe the description on the tax-roll in the light of extraneous facts.

"In a conveyance the office of a description is not to identify the land, *but to furnish the means of identification, and where this is done it is sufficient.*"

Works vs. State, 22 N. E. R., 127.

A reference to "surrounding circumstances" is allowed for the purpose of ascertaining the subject matter of a contract.

Maryland vs. Railroad, 22 Wal., 105.

Thorington vs. Smith, 8 Wal., 1.

U. S. vs. Peck, 102 U. S., 65

In Dougherty vs. Chestnut, 5 S. W. Ret., 444, the property was described as the farm of Henderson Fudge, known as "Rose Hill." It was "insisted that there is a total want of identification of the land—there is no state or county, no civil district and no designation in writing that will identify it," but the court held the objection was not well taken, and admitted evidence of the surrounding circumstances for the purpose of completing the identification.

Neither the above nor either of the following descriptions would comply with the requirements of Sec. 44, cited *supra:*

"A certain tract of land called Mount Hope, containing about forty acres, situated on the southerly side of N. river."

Old Colony Railroad vs. Evans, 66 Am. Dec., 394.

'The tract of land bought of Charles and James McCartney, lying in Greene county."

McCaery vs. King's heirs, 39 Am. Dec., 170.

And yet in each of those cases extraneous facts were permitted to be shown, and the conveyances were sustained.

From which it follows that, although such descriptions would be an irregularity under Sec. 44, they would, under sections 149 and 153, be mere irregularities which would not invalidate a tax deed.

The "surrounding circumstances" in this case, which are to be considered in connection with the description

in any part of the proceedings, consists of the entire proceedings, together with the facts stated in the 9th finding, as well as the description given by defendant below.

From the various statutory provisions above cited it appears that there are numerous instances in the course of tax-sale proceedings, in addition to those which appear in the findings, where it is necessary to describe the land. The deed being in statutory form raises the presumption that in each case, except upon the tax-roll, the word "street" always followed the words "James," "Joy," &c.

Again, notwithstanding the fact that the headings of the various columns are repeated on each successive page, properly speaking, each page, after the first, is a mere continuation of same columns which appear on the first page—as much so as if on a single page and with a single heading.

A comparison will show that the record, as printed herein, does not with strict accuracy represent the original record.

The word "bl'k" is written from left to right, and on the first page the words "Ewing street" appear *underneath* the word "bl'k."

Under the rule which require special significance to be attached to written portions of documents which are partly written and partly printed, it certainly appears with reasonable certainty that at the beginning of the roll, at least, the lots are described as being on Ewing *street*. And when we find the words "James," "Joy," "Wood," "Armstrong" written in a similar position at a lower point in the same column, and

that "Ewing," "James," &c., are the names of streets in Kansas City; and when we also find in all other descriptions throughout the proceedings that the lots in question are described as situated on streets having those names; and when we find the plaintiff, in his petition in this very case, describing the lots sued for as being on streets having those names, we are certainly warranted in claiming that the omission of the word "street" on the tax-roll is a *mere* irregularity.

It will be noted the court below bases its judgment solely upon the mere fact that the lots were described by the street instead of by the block, and the omission of the word "street" on the tax-roll is not referred to. In this same connection it will also be noted that the deed, being in the exact statutory form, raises a presumption as to the regularity of *each successive step*.

Notwithstanding any apparent insufficiency in any description throughout the proceedings, in the absence of proof to the contrary we are bound to presume the existence of any facts which in connection with the description given, would have been sufficient to identify the lands.

As stated in 23 Kansas, 719, cited *infra*, the description was sufficient unless "so uncertain as to render it impossible to ascertain where the land lies."

It was not incumbent upon us to show or to have the findings show there was but one Kansas City in Wyandotte county, or that the only streets named James, Joy, &c., in said county were in Kansas City, or that if there were, that streets bearing those names in Kansas City were the only ones upon which there

were lots having the numbers of those sued for, or that there were no blocks in Kansas City, or that if there were, instead of being numbered they were named "James," "Joy," &c.

For cases where alleged insufficient descriptions have been held sufficient, see State vs. Sterns, 28 Kas., 159; School Dist. vs. Chicago Lumber Co., 41 Kas., 620; Cordes vs. State, 37 Kas., 48.

If the existence of any of the foregoing facts be necessary to the validity of any single step in the tax-sale proceedings their existence must be presumed. The first finding is an ultimate fact pure and simple, because it is on the extreme verge of the line which separates between questions of law and fact. From the first finding the legal conclusion desired by us follows immediately and without the aid of any intervening fact existing by way of inference to serve as a stepping stone between the facts found and the desired legal conclusion. The findings subsequent to the first relied on by defendant as a basis for the legal conclusion adverse to the presumption afforded by the tax deed are of a different character.

However strongly they may tend to support the legal conclusions contended for by defendant in error, there is ample room between such facts and such conclusion for other facts, entirely consistent therewith, from which such conclusions would not follow. The plaintiff's own petition shows that there are lots having the numbers of those in the tax proceeding; that lots having those numbers are in Wyandotte county; that they are upon the streets named in those proceedings, and

that the streets having these names are in Kansas City and in said county.

These are extraneous facts to be considered in connection with any particular description claimed to be defective.

It may well be said that every finding made by the court was correct, and yet the description may have been such that the lots could be identified, and if this were so the description was sufficient.

As stated by the Supreme Court of Kansas, in Jeffer-Co. vs. Johnson, 23 Kansas, 719, in speaking of Sec. 153 of the Tax Law:

"Now under all the authorities descriptions may be made in any form which the parties may choose, provided such descriptions are not so uncertain or indefinite as to render it impossible to ascertain where the land lies. If such descriptions are sufficiently definite to designate the land, by the aid of matters and things had in contemplation by the parties, then such description will be held sufficient and valid, although they might be considered slightly defective if viewed by themselves alone or without the aid of auxiliary circumstances."

However, we do not understand the court as having based its decision upon any insufficiency of description, but rather upon the mere fact that the lots were described by the street instead of the block.

Whether or not any particular description was fatally defective depended upon the question whether or not, by aid of extraneous facts, the property could be identified, and if the defendant wished to overthrow the presumption afforded by the tax deed it was incumbent

upon him to have such fact affirmatively appear in the evidence and in the findings. If the evidence so warranted, he should have objected to the findings as defective, and should have insisted upon having the court go one step further and find the final and ultimate fact, to the effect, in substance, "that the lots could not be identified from the description given." In the absence of such a finding the defendant is not entitled to any relief, even though this court, with all the evidence before it, might be of opinion such a finding should have been made.

Instead of making such a finding the conclusions of law clearly show the court was of a contrary opinion.

The same may be said as to the claim made by opposite counsel, that as to a part of the lots was not for a sum sufficiently large to cover the full amount for which the land should have been sold.

Every conceivable arrangement is made in regard to some of the matters upon which the amount of legal charges depend. Especially is this so in the matter of printers' fees.

The express statutory presumption created by section 139 abides until overthrown by some finding of an ultimate fact which is *necessarily* inconsistent therewith.

If the evidence made it appear that the sale was for an amount too small, there should have been an express finding of that very fact instead of a finding that certain words, figures and ruled columns constitute a copy of the tax-roll.

The law shows what the charges might be. It does

not show what they must be or are in any particular case.

There should have been an express finding as to what the charges were. The desired legal conclusion would have followed immediately. It is never sufficient for the court to substitute in place of ultimate facts other facts which are *prima facie* evidence of ultimate facts. The legal conclusion must, in all cases, follow directly from facts which are found, rather than from such as may be inferred from facts which are found.

The case of Hewitt vs. Storch, 31st Kansas, 488, is closely in point. It clearly establishes the position that the entire proceedings are to be referred to in ascertaining the description to be inserted in a deed.

In that case a first deed was executed which gave the description "as fully as the tax deeds would warrant." Afterwards a second deed was taken in which a different description was given.

The court expressly declined to pass upon the sufficiency of the description in the first deed, and confined itself to a decision that the rights of the holder of the original deed were not strengthened by the second deed.

Says the court: "It is unnecessary for the purpose of this case to decide whether the tax-roll of 1872 or the tax certificate of May 15, 1873, sufficiently described lot 19, in block 16, in S. C. Charles' addition.

"A tax deed to be valid must not only substantially conform to the requirements of the statute, but must correspond with the proceedings upon which it is based in all essential particulars. The county treasurer must give to the purchaser, on payment of his bid, a certificate describing the land purchased *in accordance with*

the records of the proceedings in his office. * * * He has no power to insert in the deed executed by him another and a different description *from that contained in the tax proceedings.*"

A county clerk fully performs his duty when he writes out in full in the deed the description of land given on the tax-roll *and the proceedings upon which the tax sale is made.* The deed of June 28, 1887, described the premises as fully *as any* of the records of the tax proceedings authorized.

We are not contending that it is in the power of the clerk to look to facts which do not appear in the records for the purpose of making up the description to be inserted in the deed. He must confine himself to the records which Sec. 121, *supra*, requires to be filed in his office.

However, when the sufficiency of any description is challenged in legal proceedings, the court is free from any such limitation, and it has precisely the same latitude as in an ordinary case involving the construction of a description in a deed.

The language of this court in regard to statutory provisions similar to sections 139 and 153 is applicable here:

"We are not unmindful of the numerous decisions of state courts which have construed away the plain meaning of statutes providing for the collection of taxes—disregarding the spirit and often the letter of the enactments, until of late years the astuteness of judicial refinement had rendered inoperative all legislative provisions for the sale of land for taxes. * * * To meet this tendency of judicial refinement many of the

states have of late adopted very rigid legislation. * * There is no possible excuse for not enforcing such statutes according to their letter and spirit."

De Treville vs. Smalls, 98 U. S., 527.

For all of which reasons we respectfully submit that the findings of fact relied on by defendant in error do not reach deep enough to overthrow the presumption created by the tax deeds. It follows as a corollary that judgment should have been rendered in favor of the plaintiff in error.

HUTCHINGS & KEPLINGER,

Attorneys for Plaintiff in Error.

Supreme Court U. S.
FILED,
JAN 10 1891
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

J. C. STOUT,
Plaintiff in Error,

vs.

JOHN J. MASTIN,
Defendant in Error.

Brief of Defendant in Error.

T. A. FRANK JONES,
Attorney for Defendant in Error.

KANSAS CITY, MO.:
SIDNEY F. WOODY, PRINTER, 613 DELAWARE ST.
1890.

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Brief of Defendant in Error.

But a single and simple question of law is presented in this case. The court below held that the tax deeds of the plaintiff in error were invalid by reason of the mis-description on the tax roll of the property therein conveyed and by reason of the variance of the description of said property in the tax proceedings from the description on the tax roll for the year the taxes became delinquent. (Conclusions of Law 1, 2, 5, 6; Findings of Fact 4, 5, 6, 7, 8, 9.) The plaintiff in error seeks to have the judgment based on this finding reversed.

The description of the property in the tax pro-

ceedings and deeds is Lot 241 James Street, Lot 248 Wood Street, Lots 246, 248, 250, 252 and 260 Armstrong Street. The description on the tax roll for the year the taxes became delinquent (1877) is Lot 241 James Block, Lot 248 Wood Block, Lots 246, 248 250, 252 and 260 Armstrong Block. The variance in the description consists, in each instance, of the substitution of the word "street" in the tax proceedings for the word "block" on the tax roll. For the sake of brevity, a single lot will be referred to in the argument as standing for all.

Section 118 of chapter 107 of the Compiled Laws of Kansas reads: "No sale of any land or town lot for taxes shall be considered invalid on account of its having been charged on the tax roll in any other name than that of the rightful owner, *but such land must be in other respects sufficiently described on the tax roll*, and the taxes for which it is sold be due and remain unpaid at the time of such sale." The defendant in error contends that the description on the tax roll—Lot 241 James Block—if intended as a description of Lot 241 James Street, is insufficient. The description on the tax roll is in itself complete, definite and unequivocal. There is nothing the matter with it except that there is no such property as that described. The plaintiff in error first shows by oral testimony that there is no such property as

Lot 241 James *Block*. Then he asks the court, in aid of his tax deed, by construction to subtract the word "block" and add the word "street" in order to make out the description in his deed "Lot 241 James Street."

The ground on which he asks to have the word "block" eliminated is that on the tax roll block, or rather "bl'k," is printed while James is written. This would be a reason if the words were antagonistic. But they are not. Together they make apparent sense, have an apparent meaning. Eliminate the work block, and no sense or meaning is left.

The reason for supplying the word "street" is that on the first page of the tax roll the words "Ewing *Street*" are written in the same relative position as the word "James" on the eighth page, the word "Wood" on the fourteenth page, and the word "Armstrong" on the eighteenth. The plaintiff in error contends that "each page after the first is a mere continuation of the same columns which appear on the first page, as much so as if on a single page and with a single heading." Suppose it were necessary to describe on this tax roll lots by the block as well as by the street. According to their argument, it could not be done by omitting the word "street" and leaving the word "block" unerased, and "Lot 241 James Block" would have to be construed "Lot 241

James Street," although, upon our supposition, the former were the correct description! There is nothing in the tax roll to assist the court in changing the description from block to street. That change, if made, must be founded on the oral testimony that there is no such property as that described.

Section 106 of chapter 107 of the Compiled Laws of Kansas reads as follows: "The County Treasurer shall, between the first and tenth of July, in each year, make out a list of all lands and town lots subject to sale, *describing such lands and town lots as the same are described on the tax roll.*"

Section 137 of the same chapter requires the County Treasurer to publish "a list of all unredeemed lands and town lots, *describing each tract or lot as the same was described on the tax roll.*" There is no pretense that these repeated and mandatory requirements of the statute were complied with unless it be held that "Lot 241 James Bl'k" (the description on the tax roll) and "Lot 241 James Street" (the description in the advertisements) are the same. For this reason there was no such advertisement as required by law and the tax deed is therefore invalid. (Conclusions of Law 1, 2 and 3.)

The case of *Hewitt & Rounds vs. Storch*, 31 Kansas, p. 488, is the same with this in all essential respects. The description on the tax roll was Lot

19, Blk. 16, Challis' Addition. The correct description was Lot 19, Blk. 16, *L. C.* Challis' Addition. The County Clerk first made a deed containing the description on the tax roll, and afterwards made a deed containing a correct description. The question was as to the validity of the second deed. In that case the variance consisted in the addition of the letters "L. C." to the description on the tax roll. In this the variance consists in the elimination of the word "block" and the substitution of the word "street." The Supreme Court of Kansas, in holding this tax deed invalid, says: "A tax certificate and deed thereon have relation to and are formed upon the tax proceedings prior thereto, and a County Clerk fully performs his duty when he writes out in full in the tax deed the description of land given on the tax roll and the proceedings upon which the tax sale is made. The deed of June 28th, 1887, described the premises therein mentioned as fully as any of the records of the tax proceedings authorized. The County Clerk had no power to go further. If he had added anything in the tax deed to the description not contained in the tax proceedings, such addition would not aid or materially benefit the deed. If the proceedings up to the execution of the first tax deed were invalid for the want of a sufficient description of the property sold at the tax sale, the fatal defect